

The complaint

Mr and Mrs H complain National House-Building Council (NHBC) unfairly declined a claim they made on their building warranty for a damaged drain.

As Mr H has been the main correspondent on the claim and complaint, I've only referred to him throughout the decision.

What happened

In early 2024 Mr H noticed that a grate covering a drain at the top of his driveway had come off. Concerned about the damage caused to the drains, he made a claim on his NHBC warranty.

NHBC considered a claim under section 3 of the warranty, which covers years three to ten of the policy. It ultimately declined the claim. It said the issue with the grate wasn't covered by the warranty because it wasn't "drainage below ground" which the warranty provided cover for.

Unhappy with its response, Mr H complained, NHBC didn't agree to change its position and so Mr H brought his complaint to the Financial Ombudsman Service for an independent review.

Our Investigator thought the drain cover itself wasn't covered, since it wasn't below ground in line with the policy terms. But she thought the concrete channel, that sits under the grate (and therefore she said, "below ground") was also damaged, should be considered under the NHBC warranty.

Mr H accepted that outcome. NHBC accepted that the concrete channel was "below ground" and so met the policy terms. It also accepted the warranty covers physical damage to the home and the driveway, with drainage classed as the part of the home and therefore covered. However, it said the physical damage noted above must have been caused by a builder failing to build the drain to meet NHBC requirements, which it didn't think was the case here.

NHBC also said, in any event, even if the claim was accepted as covered, it didn't think it would meet its minimum claim value applicable of £1,900. Under the policy terms, NHBC says it doesn't apply an excess to valid claims, but if the cost of the work claimed for is below the minimum claim value, NHBC will not do the work or pay anything towards the cost. As a result, our Investigator issued a new complaint outcome, she said the claim wouldn't be met as NHBC had showed, with its scope of works, that the costs wouldn't exceed the minimum claim value.

Mr H asked for an Ombudsman to consider matters, he said NHBC can't know how much the repair would cost because he hadn't provided any quotes for the works yet. He subsequently provided some quotes that estimated the work to cost around between £2,500(+VAT) - £3,300.

Our Investigator said any dispute about the cost of the works (i.e. if Mr H thought it would cost more than the minimum claim amount) would need to be raised as a new complaint. Mr H said NHBC shouldn't be allowed to set a minimum claim value. He said there must be some law that compels it to mend the fault regardless of how much it costs. So he asked for an Ombudsman to decide on this point.

I felt that as NHBC had ultimately focussed on the minimum claim value as reason to decline the claim, I should consider whether that was a reasonable outcome for it to reach, without the need for Mr H to make a new complaint. So in November 2024 I issued a provisional decision on this complaint. So I've copied my findings below:

"Firstly, I should set out that it seems accepted by both parties that the grate covering the drain isn't covered by the warranty. I consider it's also accepted by both that the concrete channel underneath the grate is covered by the warranty since that covers "drainage below the ground". So I don't intend to issue a finding on either of those points.

The points that really need considering are around the minimum claim value. In relation to that, the policy says:

"if the cost of the work you are claiming for is below the minimum claim value, we will not do the work or pay anything towards the cost. However, if the cost to us of dealing with your claim is above the minimum claim value, we will do the work or pay the cost in full and you will not have to make a contribution."

Mr H says there should be a law that stops NHBC being able to set a minimum claim value, and it should carry out any repairs, whatever the likely cost. I'm sorry to disappoint Mr H but I don't consider there is a law that prevents NHBC from setting a minimum claim value. Insurers are entitled to decide what risks they want to insure against and on what terms; it isn't for this Service to decide what an insurer provides cover for, but we will consider if it's applied its terms fairly. Having checked Mr H's policy documents, I'm satisfied NHBC has quoted the correct minimum claim value of £1,900. I don't intend to find it unfair or unreasonable for NHBC to apply the minimum claim value to this work.

NHBC has, in support of its claim about the work costing less than the minimum claim value, provided this Service with a schedule of work. The work is set out as being "Remove broken ACO drain and replace with new, connect to existing channel and outlet." It costs this work at around £680. I'm satisfied from the photographs I've seen that, on the face of it, it addresses the issue presented by Mr H.

Mr H has provided two quotes from his own contractors who've attended the property. The first was for £2,450+VAT. The quote says it will fit a different type of drain that is not a domestic light weight drain, and to do so it will need to cut back some of the tarmac on the driveway, which would then need to be replaced. The quote doesn't break down how much the drain and tarmac costs would be individually.

Mr H's other quote for the drain repair is £850. However, Mr H said when factoring in replacing the tarmac on the drive, it takes the quote up to £3,300.

Having compared NHBC's quotes to Mr H's, the main difference in price seems to stem from the replacing of the tarmac on the drive, since the £850 quoted for the drain repair alone is similar to NHBC's quote of £680. So I intend to say that NHBC hasn't acted unfairly in its quote for replacing the drain. I say that because NHBC is likely to benefit from agreed rates with the contractors it uses, which means it will pay less to repair the drain than Mr H would likely pay if he arranged the work privately. I don't consider there is anything inherently unfair in NHBC receiving discounts, so I don't think NHBC needs to accept the claim for the drain

based on Mr H's quotes.

In relation to replacing the tarmac, I'll take into account any comments I receive in response to this provisional decision but at the moment I'm not minded to decide, based on the photographs I've seen, that replacing the tarmac on the whole driveway would be needed for NHBC to carry out a repair to the drain. The tarmac itself isn't damaged. The drain is at the end of the drive, where the tarmac ends, not embedded in the middle of the driveway, for example. So I don't intend to find NHBC has acted unfairly in not factoring in costs for a full replacement of tarmac on Mr H's drive.

I accept, in line with Mr H's quote for £2450+VAT that it's possible some of the tarmac needs to be cut away or replaced. Although I note that quote intends to replace the drain with a different one - a highway standards drain rather than a domestic one - which I don't think would be covered under Mr H's policy. But in any event, even if I were to find that NHBC should include an amount for replacing some of the tarmac, I still don't intend to find NHBC has acted unfairly in saying the claim wouldn't meet the minimum value.

Even if it factored in replacing some of the tarmac, the works needed would still most likely come under the £1,900 minimum claim value. I say this because setting aside the cost NHBC have quoted for the drain repair (£680), it would leave £1,220 for replacing the strip of tarmac. Mr H's second quote estimates the tarmac to cost £2,450 (worked out by £3,300 (for the total quote) - £850 (for the drain) = £2,450). However, that quote is to re-tarmac the entire driveway, rather than just the part near the drain. I've already set out above that I don't think that is needed to resolve the issue with the drain. And so, I consider around £1,200 for any small amount of replacement of tarmac needed - half the cost of the second quote for replacing all the tarmac - would likely be more than sufficient. Meaning the cost of the work necessary to resolve the below ground drainage covered by the policy would not exceed the minimum claim value. And so, I intend to find that NHBC hasn't acted unfairly in declining Mr H's claim based on the minimum claim value."

Responses to the provisional decision

Mr H was unhappy with the findings of the provisional decision. He said if part of the tarmac was cut away and re-laid, you'd see a join between it and the rest of the driveway, which isn't how he bought the property. He wants the drive to be uniform. He also said I'd "buckled under the influence" of NHBC and had wasted his time.

NHBC didn't provide a response to my provisional findings.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand Mr H thinks I've wasted his time, that wasn't my intention. I can also assure him I haven't buckled under any influence from NHBC, and I made my provisional findings freely.

I accept that if some of the tarmac needed to be cut away, that there would be a join between the newly laid tarmac and the original. I also accept this isn't the way the property was bought. But the NHBC warranty doesn't indemnify a policyholder in the same way a traditional home insurance policy would. When making a claim on a home insurance policy, the policy is there to indemnify a consumer and repair the damage as though there was never a loss. That might, were a small part of a drive damaged by an insured event, mean that the insurer being found liable for re-laying tarmac across the entire drive would be reasonable. But this is not a home insurance policy.

The NHBC warranty is a defects policy which is there to put right defects as a result of a builder not building to NHBC's standards. Its liability is to put right the defect – which in this case is the drain. In the circumstances Mr H finds himself in, NHBC doesn't need to re-lay tarmac across the whole driveway to resolve the defect. And so, I'm satisfied that it's reasonable that it hasn't considered the cost for that.

As set out above, Mr H's comments haven't changed my mind on the outcome of the complaint. As such my provisional findings are now that of this, my final decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H and Mr H to accept or reject my decision before 25 December 2024.

Michelle Henderson
Ombudsman